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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198460

DATE: October 28, 1980

MATTER OF: James H. Bailey - Termination of Per Diem Entitlement when Employee Dies on Temporary Duty

DIGEST: (1) Employee of General Services Administration died while on temporary duty for which he was authorized per diem allowance. Payment of per diem in these circumstances is subject to same rule which governs payment of compensation to deceased employee; namely, payment may be made to one legally entitled to payment of per diem allowance due deceased employee of United States up to and including entire date of death, regardless of time during day that death occurs, but such payment may not be made for any date later than that.

(2) Where application of rule stated in this decision in regard to termination of deceased employee's per diem entitlement precludes reimbursement for authorized expenses actually incurred by employee and definitely intended for coverage by the per diem entitlement, agency may find that employee's death comes within the scope of our decision, Snodgrass and VanRonk, B-195352, July 17, 1980, 59 Comp. Gen. _____. Accordingly, pre-paid expenses incurred by a deceased employee may be reimbursed by his agency to the same extent as if the temporary duty had been cancelled or curtailed.

The General Services Administration (GSA) has ^{ABC00017, R.} asked this Office to determine when the per diem entitlement terminates in circumstances where an employee on temporary duty dies. For the reasons which follow we conclude that an employee's entitlement to per diem

[Termination of Per Diem Entitlement]

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continues through the entire day of the employee's death but may not be further extended to a later date to approximate the planned culmination of the temporary duty and return travel.

Mr. Fred T. Latkowski, Acting Assistant Regional Administrator, Transportation and Public Utilities Service, General Services Administration--Region 5, reports that on December 17, 1979, Mr. James H. Bailey, a motor pool employee with the General Services Administration, Transportation and Public Utilities Service, Motor Equipment Division, was sent on temporary duty travel. Mr. Bailey, whose official station was Red Lake, Minnesota, was detailed to perform temporary duty at the Duluth, Minnesota, GSA Interagency Motor Pool from December 17, 1979, through December 21, 1979. On December 19, 1979, Mr. Bailey suffered an apparent heart attack and was pronounced dead at St. Lukes Hospital, Duluth, Minnesota, at 11:55 a.m.

Mr. Bailey left his home at approximately 8 a.m. on December 17, 1979. Commercial lodgings were obtained in Duluth, Minnesota, at a daily rate of \$19.66 with the motel charging for 3 days lodgings, December 17 through 19, 1979. In connection with this temporary duty Mr. Bailey was authorized per diem computed on the "lodgings plus" method not to exceed \$35 per day. Following his death Mr. Bailey's remains arrived back at the official station at about 10:30 p.m. on December 20, 1979.

Authorizing officials at the Red Lake, Minnesota, facility requested assistance from the GSA Finance Division, Kansas City, Missouri, on preparation of the travel voucher. The responsive instructions were to claim the actual expenses for preparation of the remains for transportation to the official station, limited to \$250, as well as those transportation expenses not to exceed cost by common carrier, and per diem expenses until the time the remains arrived at the official station. Mr. Latkowski questions the continuation of per diem beyond the day of Mr. Bailey's death since compensation may not be paid beyond the day of death of an employee.

Section 5702 of title 5, United States Code (1976), provides that under regulations prescribed by

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the Administrator of General Services, employees as defined by 5 U.S.C. § 5701 while traveling on official business inside the continental United States are entitled to a per diem allowance at a rate not to exceed \$35. Implementing regulations appear in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). The pertinent paragraph 1-7.3c(1) of the FTR, as amended effective May 1, 1977, provides that when lodgings are required, per diem shall be established on the basis of the average amount the traveler pays for lodging, plus an allowance of \$16 for meals and miscellaneous expenses, not to exceed the maximum amount. This is known as the "lodgings-plus" system of computing allowable per diem. Hutchinson, B-191559, November 8, 1978.

Paragraph 1-7.3c(1)(a) of the FTR provides that to determine the average cost of lodging, the total amount paid for lodgings during the period covered by the voucher is divided by the number of nights for which lodgings were or would have been required while away from the official station. Moreover, FTR paragraph 1-7.3c(2) requires that the traveler actually incur expenses for lodging before lodging costs may be used in computing per diem. Thus it seems clear that the only lodging expenses which may be reimbursed to a traveler are those that he actually paid in connection with his official travel. There appears to be no basis under the law or regulations to credit or pay an employee for lodging costs on a hypothetical basis. See Hutchinson, *supra*, citing Bornhoft, v. United States, 137 Ct. Cl. 134 (1956).

We are unaware of any legal authority which would permit the continued payment of a per diem allowance beyond the date of death of an employee on temporary duty. Therefore, we conclude that the payment of per diem in these circumstances is subject to the same rule which governs the payment of compensation to a deceased employee; namely, payment may be made to the one legally entitled thereto of the unpaid compensation due a deceased employee of the United States up to and including the date of death, but such payment may not be made to include any date later than that. See generally 9 Comp. Gen. 111 (1929); 16 *id.* 384 (1936); 43 *id.* 128 (1963); 43 *id.* 128 (1963); and 43 *id.* 503 (1964). In addition, the unpaid compensation is payable for the entire day

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of death--regardless of the time during the day that death occurs--where the employee was in a pay status immediately prior to his death. See generally 25 Comp. Gen. 366 (1945); and 52 Comp. Gen. 493 (1973).

Accordingly, the per diem allowance authorized for Mr. Bailey is payable to the person entitled thereto under 5 U.S.C. § 5582 (1976) for the period of his temporary duty from December 17 thru the date of his death, December 19, 1979. The voucher submitted should be adjusted to delete the per diem for December 20, 1979, before it is certified for payment.

Mr. Latkowski has also asked whether, "[I]f the per diem entitlement is much less than the actual and necessary subsistence expenses of the traveler, may the agency place the employee on actual expense reimbursement due to unusual circumstances and establish a reasonable allowance for meals?"

We recognize that strict application of the rule in regard to the termination of a deceased employee's entitlement to per diem may work an unintended hardship in certain cases. For example, where specific expenses associated with the temporary duty have been firmly established and incurred in advance, the death of an employee may preclude further reimbursement notwithstanding that such costs were definitely intended to be covered by the per diem allowance. In such circumstances, we believe there is for application the rule we recently adopted for cases where temporary duty is cancelled or curtailed by an agency. In our recent decision Snodgrass and VanRonk, B-195352, July 17, 1980, 59 Comp. Gen. _____, we held that when an employee has acted reasonably in incurring allowable lodging expenses pursuant to temporary duty travel orders before they have been cancelled for the benefit of the Government and is unable to obtain a refund, reimbursement of the expenses should be allowed to him as a travel expense to the same extent that they would have been if the orders had not been cancelled.

We believe that the special circumstances which attend the death of an employee while on authorized temporary duty are within the scope of Snodgrass and

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VanRonk, supra. Accordingly, [prepaid expenses incurred by a deceased employee may be reimbursed by his agency to the same extent as if the temporary duty had been cancelled or curtailed.]

In the present case, however, the use of the Snodgrass and VanRonk principle would not appear to be necessary. As stated above, per diem is payable for the period through the entire day of Mr. Bailey's death, i.e. for the 3 full days of temporary duty on December 17, 18, and 19. Since he paid in advance for 3 nights lodging, the per diem allowance would appear to cover the expenses incurred.

The voucher prepared in connection with Mr. Bailey's temporary duty may be certified for payment in accordance with this decision.

Milton J. Fowler

Acting Comptroller General
of the United States